



U.S. ARMY FREEDOM OF
INFORMATION OFFICE

DEPARTMENT OF THE ARMY
FREEDOM OF INFORMATION AND PRIVACY DIVISION
7701 TELEGRAPH ROAD
ALEXANDRIA, VA 22315-3905

REPLY TO
ATTENTION OF

May 7, 2016

Benjamin Good
American Civil Liberties Union Foundation
125 Broad Street 18th Floor
New York, NY 10004
Sent via email: bgood@aclu.org

Dear Mr. Good:

This letter responds to your Freedom of Information Act (FOIA) request dated March 3, 2016. We have assigned your request FOIA control number FA-16-0118. You are requesting records pertaining to the use of prepublication review process in Intelligence Community. Specifically, you are seeking the release of records that contain the following:

1. Policies, standards, and guidance related to prepublication review
2. Final legal analyses of past, present, or proposed prepublication-review requirements
3. Final decision of officials conducting prepublication reviews
4. Correspondence with former agency employees (or their representatives) who have submitted materials for prepublication review since January 1, 2009
5. Statistics relating to prepublication review, including but not limited to information documenting the total numbers of individuals who have submitted works for review, the total number of works submitted for review, the total number of submissions approved without change, the total number of submissions returned with proposed redactions or other.

We are releasing (8) pages and (2) excel spreadsheet documents to you obtained from the Office, Chief of Public Affairs (OCPA). We have determined (8) pages will be released in full without any redactions and the (2) excel spreadsheet documents will be released with partial redactions. All redactions and withholdings have been made pursuant to Exemption (b)(6) of the FOIA, as discussed below.

Additionally, (OCPA) provide a link below that is also responsive to your request.

<http://www.dtic.mil/whs/directives/corres/pdf/523029p.pdf>

Exemption 6 of the FOIA 5 U.S.C. § 552(b)(6)

Exemption (6) protects from mandatory disclosure “personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” 5 U.S.C. § 552(b)(6). To qualify for protection under Exemption (b)(6), records must: (1) be “personnel and medical files and similar files,” (2) the disclosure of which “would constitute a clearly unwarranted invasion of personal privacy.” *Id.*; *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). The first prong is met if the information “appl[ies] to a particular individual” and is “personal” in nature. *New York Times Co. v. NASA*, 852 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires a “balanc[ing] between the protection of an individual’s right to privacy and the public’s right to government information.” *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). The “public interest” in the analysis is limited to the “core purpose” for which Congress enacted the FOIA: to “shed . . . light on an agency’s performance of its statutory duties.” *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

We are withholding the names of personnel and their contact information under Exemption 6 to protect personal privacy. See *Judicial Watch, Inc. v. United States*, No. 03-1160, 2004 WL 26736, at *4 (4th Cir. Jan. 6, 2004). Under the Exemption (b)(6) balancing test, the Supreme Court held in a similar case that disclosure of employee addresses “would not appreciably further the citizens’ right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities.” *United States Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487 (1994). Disclosure of this information would contribute little to the public’s understanding of government activities. By contrast, such disclosure would constitute a “non-trivial” and “not insubstantial” invasion of government employees’ privacy interests. *Id.* at 500, 501.

Furthermore, Department of Defense policy following 11 September 2001, authorizes the withholding of the names and room numbers of government employees “because of a heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency.” Memorandum from D.O. Cooke, Director of Administration & Management, Office of the Secretary of Defense, Re: Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA) (Nov. 9, 2001), available at http://www.acq.osd.mil/dpap/pdi/pc/docs/Withholding_Info_that_IDs_DoD_Personnel_-_Sept_2005.pdf. As such, the names of government employees and their e-mail addresses are withheld under Exemption (b)(6).

This partial denial has been made on behalf of the Administrative Assistant to the Secretary of the Army, who has designated that this office will act as the Initial Denial Authority for records maintained by the Office of the Secretary of the Army and its serviced activities. You have the right to file an administrative appeal with the Office of the Army General Counsel within sixty (60) calendar days. See 32 C.F.R. § 518.17(c). Their mailing address is:

Department of the Army
Office of the General Counsel
104 Army Pentagon, Room 2E724
Washington, D.C. 20310

If you have any questions regarding this letter or the information furnished, please contact this office at (703) 428-6238 or email at usarmy.belvoir.hqda-oaa-rpa.mbx.foia@mail.mil. In all correspondence please refer to FOIA number FA-16-0118.

Sincerely,



Paul DeAgostino
Senior Counsel

Enclosure(s): (8) pages
(2) Excel spreadsheet documents